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6  
7 **BEFORE THE**  
**BOARD OF REGISTERED NURSING**  
8 **DEPARTMENT OF CONSUMER AFFAIRS**  
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. 2012-421

11 **KATHY ANNE TOLER**  
12 **P.O. Box 445**  
13 **Cutten, CA 95534**

**A C C U S A T I O N**

14 **Registered Nurse License No. 526839**

Respondent.

15  
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her  
19 official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
20 Consumer Affairs.

21 2. On or about September 25, 1996, the Board of Registered Nursing issued Registered  
22 Nurse License Number 526839 to Kathy Anne Toler (Respondent). The Registered Nurse  
23 License was in full force and effect at all times relevant to the charges brought herein and will  
24 expire on April 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

4. Section 2750 of the Business and Professions Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Business and Professions Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

6. Section 2761 of the Business and Professions Code, in pertinent part, states:  
"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct . . .

. . .

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

. . .

7. Section 2762 of the Business and Professions Code, in pertinent part, states:  
"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

. . .

1       "(b) Use any controlled substance as defined in Division 10 (commencing with Section  
2       11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in  
3       Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to  
4       himself or herself, any other person, or the public or to the extent that such use impairs his or her  
5       ability to conduct with safety to the public the practice authorized by his or her license.

6       "(c) Be convicted of a criminal offense involving the prescription, consumption, or  
7       self-administration of any of the substances described in subdivisions (a) and (b) of this section,  
8       or the possession of, or falsification of a record pertaining to, the substances described in  
9       subdivision (a) of this section, in which event the record of the conviction is conclusive evidence  
10      thereof.

11      . . .

12      8.     Section 490 of the Business and Professions Code provides, in pertinent part, that a  
13      board may suspend or revoke a license on the ground that the licensee has been convicted of a  
14      crime substantially related to the qualifications, functions, or duties of the business or profession  
15      for which the license was issued.

16      9.     Section 125.3 of the Business and Professions Code provides, in pertinent part, that  
17      the Board may request the administrative law judge to direct a licensee found to have committed  
18      a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the  
19      investigation and enforcement of the case.

20      10.    California Code of Regulations, title 16, section 1444, provides, in pertinent part that  
21      a conviction or act shall be considered to be substantially related to the qualifications, functions  
22      or duties of a registered nurse if to a substantial degree it evidences the present or potential  
23      unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or  
24      welfare.

#### 25                   CONTROLLED SUBSTANCES / DANGEROUS DRUGS

26      11.    Section 4021 of the Business and Professions Code states:

27            "Controlled substance means any substance listed in Chapter 2 (commencing with Section  
28            11053) of Division 10 of the Health and Safety Code."

12. Section 4022 of the Business and Professions Code, in pertinent part, states:

“Dangerous drug” or “dangerous device” means any drug or device unsafe for self-use in humans or animals, and includes the following:

"(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

• • •

"(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

13. Ativan is a brand name for lorazepam, a Schedule IV controlled substance as designated by Health and Safety Code section 11057(d)(16) and a dangerous drug as designated by Business and Professions Code section 4022.

## FIRST CAUSE FOR DISCIPLINE

(Conviction of a Crime)

14. Respondent is subject to disciplinary action under Business and Professions Code section 2761(f) in that she was convicted of a crime or act that is substantially related to the qualifications, functions, or and duties of a registered nurse. The circumstances are as follows:

a. On or about December 2, 2010, in a criminal proceeding entitled People of the State of California v. Katherine Anne Toler in Humboldt County Superior Court, Case No. CR 1004901, the respondent was convicted by her plea of guilty for violating Vehicle Code section 23103(a) (reckless driving) per Vehicle Code section 23103.5, a misdemeanor. Because the applicant pled guilty to a charge of violating Vehicle Code section 23103 (reckless driving) in satisfaction of, or as a substitute for, an original charge of a violation of Vehicle Code section 23152 (driving under the influence), the applicant was sentenced under Vehicle Code section 23103.5.

b. The circumstances surrounding this conviction are that on or about May 15, 2010, at 1004 hours, a California Highway Patrol officer arrived on the scene of a minor injury traffic collision on State Route 255. The officer located respondent's vehicle in a body of water with moderate damage to the right front fender, front grille, bumper, and left front fender. The

1 officer interviewed witnesses who reported that at approximately 0945 hours they observed a  
2 vehicle, operated by respondent, traveling southbound on State Route 255 at about 55 mph. The  
3 witnesses told the officer that respondent's vehicle was swerving and crossing into opposing  
4 traffic and it drifted across the northbound lanes of State Route 255 and drove off the roadway  
5 shoulder and landed into a body of water. The respondent was extricated from her vehicle by  
6 EMS personnel. Thereafter she was transported by Eureka Ambulance to St. Joseph's Hospital.  
7 The officer made contact with respondent at the hospital. The officer observed that respondent  
8 had thick and slurred speech, she wouldn't open her eyes, and she was unable to sit up or stand  
9 without assistance. Respondent told the officer that she was driving from Arcata to Eureka. She  
10 admitted to the officer that she had taken three (3) 1mg Adavan<sup>1</sup> pills before driving but she did  
11 not remember how or why she drove off the road into the water. The officer placed respondent  
12 under arrest for driving a motor vehicle while under the influence of drugs, a violation of Vehicle  
13 Code section 23152(a).

14 c. On or about December 2, 2010, the respondent was placed on probation for 3  
15 years, ordered to pay a \$610.00 court fine, a \$100.00 Restitution fee and a \$100.00 Probation  
16 Revocation restitution fine.

17 SECOND CAUSE FOR DISCIPLINE  
18 (Use of Alcohol and/or Drugs to an Extent or in a  
19 Manner Dangerous or Injurious to Herself or Others)

20 15. Respondent is subject to disciplinary action under Business and Professions Code  
21 section 2761(a) on the grounds of unprofessional conduct, as defined by Business and Professions  
22 Code section 2762(b), in that on or about May 15, 2010, she used drugs to an extent or in a  
23 manner dangerous or injurious to herself or others as set forth in paragraph 14, above.

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27 <sup>1</sup> According to the website Drugs.Com, Adavan is a common misspelling of "Ativan"  
28 (lorazepam).

1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction of Drug/Alcohol Offense)

3 16. Respondent is subject to disciplinary action under Business and Professions Code  
4 section 2761(a) on the grounds of unprofessional conduct, as defined by Business and Professions  
5 Code section 2762(c), Business and Professions Code section 2762(c) in that on or about  
6 December 2, 2010, she was convicted of a criminal offense involving the use of drugs as set forth  
7 in paragraph 14a, above.

8 PRAYER

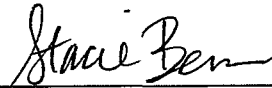
9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
10 and that following the hearing, the Board of Registered Nursing issue a decision:

11 1. Revoking or suspending Registered Nurse License Number 526839, issued to Kathy  
12 Anne Toler;

13 2. Ordering Kathy Anne Toler to pay the Board of Registered Nursing the reasonable  
14 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
15 Code section 125.3;

16 3. Taking such other and further action as deemed necessary and proper.

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18  
19 DATED: 12/30/2011

  
for LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

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